IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4487 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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KANTILAL VIRABHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4487 of 2002

MR DILIP B RANA for Petitioner No. 1

Mr.H.C.Patel, AGP for Respondent No. 1-3

MR VD PARGHI for Respondent No. 4

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 01/08/2002

ORAL JUDGEMENT

The appointment of custodian was made under section 74D of Gujarat Cooperative Societies Act

(hereinafter referred to as "the Act") by the District Registrar by his order dated 25.1.01 mainly on the ground that there was dispute regarding holding of annual general meeting. Against the same revision was preferred before the Additional Registrar who had dismissed the revision vide his order dated 23/4/01 confirming the order passed by the District Registrar under section 74 D of the Act. The said order of the Additional Registrar was carried in revision before the State Govt and the State Govt has passed the order on 6.4.02 whereby the revision was allowed. Inspite of the fact recorded by the State Govt that there were two parallel annual general meetings held the State Govt mainly considered that the annual general meeting held by Kantilal Ranchhod Parmar is legal because he is the Chairman whereas the annual general meeting held by Kantibhai Virabhai Parmar is not legal since the said person is not a member of the society or rather has ceased to be the member of the society. The said order of the State Govt is under challenge in this petition.

2. Heard Mr.Rana for the petitioner, Mr.Pargi for respondent No.4 and Mr.H.C.Patel, Ld.AGP for respondent Nos 1,2 & 3.

3. When this matter was admitted on 24.4.2002 ad interim order was passed observing that it will be open to the custodian to take charge of the affairs of the society and notice as to interim relief was made returnable on 9.5.2002. Thereafter, it was reported to the court that inspite of observations made by this court the custodian has not taken over the charge and therefore the order dated 1.7.02 was passed whereby the District Registrar was directed to remain present since no instructions were given to the Ld.AGP in this regard. Ultimately, on 11.7.02 a statement was made by the District Registrar that the charge shall be taken by Mr.Varia, Asst.Cooperative Officer as custodian.It is reported by Mr.Patel, Ld.AGP representing the Dist.Registrar that he has received a communication dated 29.7.02 whereby it is informed to him that the custodian has taken charge but certain records are yet to be obtained. He places on record the communication dated 29.7.02 received by the office of the Govt.Pleader from the District Registrar.

4. Mr.Parghi appearing for the respondent No.4 states that the record is already handed over.

5. Be that as it may, the fact remains that the custodian has taken over the charge under section 74D of

the Act. The subject matter of dispute was regarding two parallel annual general meetings held by two groups of the society, since a vacuum may not be created or rather unauthorised persons may not continue to hold the administration the appointment of custodian was made and even this court passed the interim order with a view to see that there may not be unauthorised transaction. Since the custodian has taken over the charge the order of appointing custodian has operated.

6. However, considering the facts and circumstances of the case, since the custodian has to hold the charge for a temporary period by way of stop gap arrangement, I direct that the custodian shall hold the election of the members of the Managing Committee of the society as early as possible and preferably within a period of three months from the date of receipt of writ of this court and the charge shall be handed over to the newly elected body.

7. In view of the above, the present petition is disposed of with a direction that the custodian shall hold the election of the members of the Managing Committee of Pankaj Coop.Housing Society within a period of three months from the date of receipt of writ of this court and whomsoever is elected as members of the Managing Committee at the said election shall elect the office bearers and the charge shall be handed over by the Custodian to the newly elected office bearers of the society.

8. This petition is disposed of in terms of aforesaid directions. Rule is made absolute accordingly. There shall be no order as to costs.

1.8.02 (JAYANT PATEL,J)